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11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 SECURITIES AND EXCHANGE )  
14 COMMISSION, )

15 Plaintiff, )

16 v. )

17 EXOTICS.COM, INC., L. REX ANDERSEN, )  
MARLIN R. BRINSKY, DANIEL G. )  
18 CHAPMAN, STEPHEN P. CORSO, JR., )  
BARRY F. DUGGAN, JAMES L. )  
19 ERICKSTEEN, SEAN P. FLANAGAN, )  
FIROZ JINNAH, INGO W. MUELLER, )  
20 BRIAN K. RABINOVITZ, EDWARD JAMES )  
WEXLER, GARY THOMAS a/k/a GARY )  
21 THOMAS VOJTESAK, )

22 Defendants, )

23 and )  
FLANAGAN & ASSOCIATES, LTD., )

24 Relief Defendant. )  
25 )

Case No. 2:05-CV-0531-PMP (GWF)

**JOINT INTERIM STATUS REPORT & PROPOSED AMENDED STIPULATED  
DISCOVERY PLAN AND SCHEDULING ORDER**

**(Fourth Request)**

Pursuant to the Court's May 19, 2008 Order regarding the parties' Proposed Discovery Plan and Scheduling Order (the "May 2008 Scheduling Order"), Federal Rule of Civil Procedure 26(f), and Local Rules 26-1 and 26-4, the parties represented by the undersigned counsel hereby file this Joint Interim Status Report and submit this Proposed Amended Stipulated Discovery Plan and Scheduling Order. Given the nature and complexity of the allegations in the Complaint, the current status of the litigation, the Court's prior Scheduling and Stay Orders, and the other reasons discussed below, the parties respectfully request that the Court approve the Proposed Amended Stipulated Discovery Plan and Scheduling Order set forth herein.

**I. Background**

Plaintiff U.S. Securities and Exchange Commission (the "Commission") filed this action in April 2005, alleging a manipulation and/or accounting fraud against thirteen principal defendants. Five of the defendants — Marlin R. Brinsky ("Brinsky"), Brian K. Rabinovitz ("Rabinovitz"), L. Rex Anderson ("Anderson"), Daniel G. Chapman ("Chapman"), and Sean P. Flanagan ("Flanagan") — moved to dismiss the Complaint. The Court denied Brinsky's and Rabinovitz's motions to dismiss in November 2005. Brinsky and Rabinovitz then answered the Complaint in December 2005. The Court denied Anderson's motion to dismiss in March 2006. Anderson filed his Answer in April 2006. The Court denied Chapman's and Flanagan's motions to dismiss in August 2008. Chapman and Flanagan answered the Complaint in September 2008. In October 2008, Chapman and Flanagan filed notice of their appeal of the Court's denial of their motions to dismiss. Chapman's and Flanagan's opening appellant briefs are due February 2, 2009. The Commission's responses are due March 3, 2009.<sup>1</sup>

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<sup>1</sup> In October 2005, the Court stayed the matter as to Chapman and Flanagan pending unrelated criminal proceedings against them. Pursuant to the May 2008 Scheduling Order, the stay terminated on June 16, 2008.

1 James L. Ericksteen, who is *pro se*, filed his Answer to the Complaint in September  
2 2005. Stephen P. Corso, Jr. ("Corso") answered the Complaint in May 2006, and Firoz Jinnah  
3 ("Jinnah") and Ingo W. Mueller ("Mueller") filed their answers in May 2008. Exotics.com, Inc.  
4 ("Exotics") and Gary Thomas, a/k/a Gary Thomas Vojtesak ("Thomas"), never answered or  
5 otherwise responded to the Complaint. As a result, the Commission obtained default judgments  
6 against Exotics in March 2006 and against Thomas in December 2006. The Commission  
7 reached a settlement with Barry F. Duggan ("Duggan") in April 2006, and is currently engaged  
8 in productive settlement discussions with counsel for defendants Jinnah, Mueller, and Edward  
9 James Wexler ("Wexler"). Wexler has not answered or otherwise responded to the Complaint.  
10 The Commission, however, has not sought default judgment against him because of the ongoing  
11 settlement discussions.

12 In sum, this action remains pending against ten of the original thirteen defendants. Nine  
13 of the remaining ten principal defendants have filed answers to the Complaint. The Commission  
14 is currently engaged in settlement discussions with three of the remaining defendants, including  
15 Wexler who has not answered or otherwise responded to the Complaint. Additionally, the  
16 Commission expects to present shortly proposed settlement terms to additional defendants,  
17 including Brinsky, Rabinovitz, Flanagan, and Corso.

## 18 **II. Discovery**

19 In September and October 2006, respectively, the Commission and Brinsky and  
20 Rabinovitz made the required initial disclosures pursuant to Federal Rule of Civil Procedure  
21 26(a)(1). In October 2006, Brinsky issued a First Set of Interrogatories to the Commission, to  
22 which the Commission responded in December 2006. Also in October 2006, Rabinovitz issued a  
23 First Set of Interrogatories to the Commission, a First Set of Requests for Admission to Corso,  
24 and a First Sets of Request for Production of Documents to Corso, Chapman, and Flanagan. In  
25 December 2006, the Commission and Corso served their respective Responses to that discovery.

1 Chapman and Flanagan, however, did not respond, citing the Court's October 2005 Order  
2 staying the matter as to them. Rabinovitz has not yet re-served the discovery following the  
3 termination of the stay. Chapman issued a First Set of Interrogatories, First Set of Requests for  
4 Admission, and First Set of Request for Production of Documents to the Commission in October  
5 2008, and the Commission issued its responses in November 2008.

6 In addition, as ordered by the Court in February 2006, the Commission has provided  
7 Jinnah and Mueller with copies of voluminous documents obtained by the Commission from the  
8 British Columbia Securities Commission ("BCSC") during the Commission's private  
9 investigation. The Commission provided these documents to Jinnah and Mueller so that they  
10 may conduct a privilege review with respect to the documents, provide the Commission with a  
11 privilege log, and allow the Commission, if necessary, to challenge assertions of privilege. Due  
12 to technical difficulties in accessing the data on the disk, Jinnah and Mueller have not yet  
13 completed the privilege review of the BCSC documents. Their counsel is working with the  
14 Commission to determine how best to provide access to the data on the disk; this is an ongoing  
15 process involving technical expertise on both sides.

16 In December 2006, the Commission served two expert reports on the parties. In addition,  
17 the Commission has taken fourteen depositions (nine since the parties' March 2008 Joint Interim  
18 Status Report) and one asset deposition (related to certain ongoing settlement negotiations).

19 **III. The Current Discovery Plan and Scheduling Order**

20 In May 2008, the parties submitted their Proposed Amended Stipulated Discovery Plan  
21 and Scheduling Order (Third Request) despite the fact that: (1) only five of the principal  
22 defendants had answered the Complaint; (2) in October 2005, the Court had ruled that Chapman  
23 and Flanagan did not have to answer or otherwise respond to the Complaint until completion of  
24 the pending criminal matters against them; and (3) the Commission was currently negotiating  
25 potential settlements with several of the remaining defendants.

1 Also in May 2008, the Court granted the parties' Proposed Amended Stipulated  
 2 Discovery Plan and Scheduling Order and issued its May 2008 Scheduling Order. Pursuant to  
 3 the May 2008 Scheduling Order, the Court set the following discovery plan and scheduling order  
 4 dates:

- 5 1. Last day to file interim status report: December 17, 2008.
- 6 2. Last day to disclose rebuttal experts: February 18, 2009.
- 7 3. Last day to complete discovery: March 18, 2009.
- 8 4. Last day to file dispositive motions: April 15, 2009.
- 9 5. Last day to file joint pretrial order: May 19, 2009. In the event dispositive motions  
 10 are filed, the date for filing the joint pretrial order shall be suspended until 30 days  
 11 after a decision of the dispositive motions.

12 As discussed below, the parties hereto believe that good cause exists to amend or  
 13 otherwise modify the dates and deadlines set by the Court's May 2008 Scheduling Order.

14 **IV. Rule 26(f) Conference**

15 Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 26-1(d), counsel for the  
 16 Commission and counsel for the defendants hereto have conferred on several occasions  
 17 concerning, among other things: (i) the nature of the Commission's claims and defendants'  
 18 defenses; (ii) the possibility for a prompt settlement or resolution of the case; (iii) arranging for  
 19 the disclosures required by Rule 26(a)(1); (iv) the original and prior proposed amended  
 20 discovery plans; (v) to prepare an agenda of items to be discussed at any scheduling conference  
 21 which may be set by the Court; and (vi) the need for this Proposed Amended Stipulated  
 22 Discovery Plan and Scheduling Order given.

23 **V. Good Cause for an Amended Stipulated Discovery Plan and Scheduling**  
 24 **Order**

25 In submitting the original discovery plan and each prior amended discovery plans, the  
 parties respectfully requested that the proposed deadlines be revisited by the Court after

1 Chapman and Flanagan had been ordered to answer the Complaint and once it became clear how  
2 many defendants remained in the action (after completion of ongoing settlement discussions).  
3 For the following reasons, the parties now request the Court revisit the May 2008 Scheduling  
4 Order.

5 As noted above, the stay as to Chapman and Flanagan terminated in June 2008, and they  
6 answered the Complaint in September 2008. The parties may now notice the depositions of  
7 Chapman and Flanagan and propound other discovery, some of which Chapman and Flanagan  
8 had refused to answer while the stay was in effect. Moreover, the parties anticipate the need to  
9 take more than a dozen additional depositions, mostly of individuals who are not subject to trial  
10 subpoena.

11 Further, the Commission and several defendants are engaged in ongoing and productive  
12 settlement discussions, and the Commission expects to present proposed settlement terms to  
13 these defendants and perhaps additional defendants in the near term. The prior discovery plans  
14 and scheduling orders contemplated that Duggan (or any other defendant with whom the  
15 Commission staff reaches a settlement in principle or is currently engaged in settlement  
16 discussions) would not participate in discovery, except as a non-party, unless and until the  
17 settlement in principle is rejected by the Commission or settlement discussions have ceased. The  
18 Commission has settled the matter as to Duggan, but continues to discuss settlement with several  
19 of the remaining defendants. Additionally, due to both the ongoing settlement discussions and  
20 technical difficulties, defendants Mueller and Jinnah have not completed the required privilege  
21 review with respect to the BCSC documents produced to them by the Commission, and Wexler  
22 has not answered or otherwise responded to the Complaint.  
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1 For all of these reasons, it is in the best interests of all parties, and in the fair adjudication  
2 and resolution of this matter, that the parties<sup>2</sup> request the Court adopt the following amendments  
3 or modifications to the Court's May 2008 Scheduling Order:

- 4 1. Last day to file interim status report: July 17, 2009.  
5 2. Last day to disclose rebuttal experts: August 18, 2009.  
6 3. Last day to complete discovery: September 18, 2009.  
7 4. Last day to file dispositive motions: October 15, 2009.  
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25 <sup>2</sup> Defendant James Ericksteen, who is presently *pro se* according to the docket, has indicated that he is opposed to any extension of the discovery deadlines in the case.

5. Last day to file joint pretrial order: November 19, 2009. In the event dispositive motions are filed, the date for filing the joint pretrial order shall be suspended until 30 days after a decision of the dispositive motions.

DATED this 17th day of December, 2008.

SECURITIES & EXCHANGE  
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IT IS SO ORDERED:

UNITED STATES MAGISTRATE JUDGE

DATED: \_\_\_\_\_



**CERTIFICATE OF SERVICE**

In accordance with Fed. R. Civ. P. 5, I certify that I am an employee of David J. Merrill, P.C. and that on the 17th day of December, 2008, a copy of the foregoing Joint Interim Status Report & Proposed Amended Stipulated Discovery Plan and Scheduling Order was served on the parties by filing and serving the same using the ECF system or by U.S. Mail as indicated as follows:

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25